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असाधारण

EXTRAORDINARY

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PART II — Section 2

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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।

Separate paging is given to this Part in order that it may be filed as a separate compilation.

RAJYA SABHA

The following Bills were introduced in Rajya Sabha on 15th December, 2008.

I

BILL NO. LXV OF 2008

A Bill to provide for free and compulsory education to all children of the age of six to fourteen years.

Be it enacted by Parliament in the Fifty-ninth Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

1. (1) This Act may be called the Right of Children to Free and Compulsory Education Act, 2008.

Short title,
extent and
commence-
ment.

(2) It shall extend to the whole of India except the State of Jammu and Kashmir.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

2. In this Act, unless the context otherwise requires,—

Definitions.

(a) "appropriate Government" means—

(i) in relation to a school established, owned or controlled by the Central Government, or the administrator of the Union territory, having no legislature, the Central Government;

(ii) in relation to a school, other than the school referred to in sub-clause (i), established within the territory of—

(A) a State, the State Government;

(B) a Union territory having legislature, the Government of that Union territory;

(b) "capitation fee" means any kind of donation or contribution or payment other than the fee notified by the school;

(c) "child" means a male or female child of the age of six to fourteen years;

(d) "child belonging to disadvantaged group" means a child belonging to the scheduled caste, the scheduled tribe, the socially and educationally backward class or such other group having disadvantage owing to social, cultural, economical, geographical, linguistic, gender or such other factor, as may be specified by the appropriate Government, by notification;

(e) "child belonging to weaker section" means a child belonging to such parent or guardian whose annual income is lower than the minimum limit specified by the appropriate Government, by notification;

(f) "elementary education" means the education from first class to eighth class;

(g) "guardian", in relation to a child, means a person having the care and custody of that child and includes a natural guardian or guardian appointed or declared by a court or a statute;

(h) "local authority" means a Municipal Corporation or Municipal Council or Zila Parishad or Nagar Panchayat or Panchayat, by whatever name called, and includes such other authority or body having administrative control over the school or empowered by or under any law for the time being in force to function as a local authority in any city, town or village;

(i) "National Commission for Protection of Child Rights" means the National Commission for Protection of Child Rights constituted under section 3 of the Commissions for Protection of Child Rights Act, 2005;

4 of 2006.

(j) "notification" means a notification published in the Official Gazette;

(k) "parent" means either the natural or step or adoptive father or mother of a child;

(l) "prescribed" means prescribed by rules made under this Act;

(m) "Schedule" means the Schedule annexed to this Act;

(n) "School" means any recognised school imparting elementary education and includes—

(i) a school established, owned or controlled by the appropriate Government or a local authority;

(ii) an aided school receiving aid or grants to meet whole or part of its expenses from the appropriate Government or the local authority;

(iii) a school belonging to specified category; and

(iv) an unaided school not receiving any kind of aid or grants to meet its expenses from the appropriate Government or the local authority;

(o) "screening procedure" means the method of selection for admission of a child, in preference over another, other than a random method;

(p) "specified category", in relation to a school, means a school known as Kendriya Vidyalaya, Navodaya Vidyalaya, Sainik School or any other school having a distinct character which may be specified, by notification, by the appropriate Government;

(q) "State Commission for Protection of Child Rights" means the State Commission for Protection of Child Rights constituted under section 3 of the Commissions for Protection of Child Rights Act, 2005.

4 of 2006.

CHAPTER II

RIGHT TO FREE AND COMPULSORY EDUCATION

3. (1) Every child of the age of six to fourteen years shall have a right to free and compulsory education in a neighbourhood school till completion of elementary education.

Right of child to free and compulsory education.

(2) For the purpose of sub-section (1), no child shall be liable to pay any kind of fee or charges or expenses which may prevent him or her from pursuing and completing the elementary education:

Provided that a child suffering from disability, as defined in clause (i) of section 2 of the Persons with Disabilities (Equal Opportunities, Protection and Full Participation) Act, 1996, shall have the right to pursue free and compulsory elementary education in accordance with the provisions of Chapter V of the said Act.

1 of 1996.

4. Where a child above six years of age has not been admitted in any school or though admitted, could not complete his or her elementary education, then, he or she shall be admitted in a class appropriate to his or her age:

Special provisions for children not admitted to, or who have not completed, elementary education.

Provided that where a child is directly admitted in a class appropriate to his or her age, then, he or she shall, in order to be at par with others, have a right to receive special training, in such manner, and within such time-limits, as may be prescribed:

Provided further that a child so admitted to elementary education shall be entitled to free education till completion of elementary education even after fourteen years.

5. (1) Where in a school, there is no provision for completion of elementary education, a child shall have a right to seek transfer to any other school, excluding the school specified in sub-clauses (iii) and (iv) of clause (n) of section 2, for completing his or her elementary education.

Right of transfer to other school.

(2) Where a child is required to move from one school to another, either within a State or outside, for any reason whatsoever, such child shall have a right to seek transfer to any other school, excluding the school specified in sub-clauses (iii) and (iv) of clause (n) of section 2, for completing his or her elementary education.

(3) For seeking admission in such other school, the Head teacher or in-charge of the school where such child was last admitted, shall immediately issue the transfer certificate:

Provided that delay in producing transfer certificate shall not be a ground for either delaying or denying admission in such other school:

Provided further that the Head teacher or in-charge of the school delaying issuance of transfer certificate shall be liable for disciplinary action under the service rules applicable to him or her.

CHAPTER III

DUTIES OF APPROPRIATE GOVERNMENT, LOCAL AUTHORITY AND PARENTS

6. For carrying out the provisions of this Act, the appropriate Government and the local authority shall establish, within such area or limits of neighbourhood, as may be prescribed, a school, where it is not so established, within a period of three years from the commencement of this Act.

Duty of appropriate Government and local authority to establish school.

Sharing of
financial and
other
responsibilities.

7. (1) The Central Government and the State Government shall have concurrent responsibility for providing funds for carrying out the provisions of this Act.

(2) The Central Government shall prepare the estimates of capital and recurring expenditure for the implementation of the provisions of the Act.

(3) The Central Government shall provide to the State Governments, as grants-in-aid of revenues, such percentage of expenditure referred to in sub-section (2) as it may determine, from time to time, in consultation with the State Governments.

(4) The Central Government may make a request to the President to make a reference to the Finance Commission under sub-clause (d) of clause (3) of article 280 to examine the need for additional resources to be provided to any State Government so that the said State Government may provide its share of funds for carrying out the provisions of the Act.

(5) Notwithstanding anything contained in sub-section (4), the State Government shall, taking into consideration the sums provided by the Central Government to a State Government under sub-section (3), and its other resources, be responsible to provide funds for implementation of the provisions of the Act.

(6) The Central Government shall—

(a) develop a framework of national curriculum with the help of academic authority specified under section 29;

(b) develop and enforce standards for training of teachers;

(c) provide technical support and resources to the State Government for promoting innovations, researches, planning and capacity building.

8. The appropriate Government shall—

(a) provide free and compulsory elementary education to every child:

Provided that where a child is admitted by his or her parents or guardian, as the case may be, in a school other than a school established, owned, controlled or substantially financed by funds provided directly or indirectly by the appropriate Government or a local authority, such child or his or her parents or guardian, as the case may be, shall not be entitled to make a claim for reimbursement of expenditure incurred on elementary education of the child in such other school.

Explanation.—The term "compulsory education" means obligation of the appropriate Government to—

(i) provide free elementary education to every child of the age of six to fourteen years; and

(ii) ensure compulsory admission, attendance and completion of elementary education by every child of the age of six to fourteen years;

(b) ensure availability of a neighbourhood school as specified in section 6;

(c) ensure that the child belonging to weaker section and the child belonging to disadvantaged group are not discriminated against and prevented from pursuing and completing elementary education on any grounds;

(d) provide infrastructure including school building, teaching staff and learning equipment;

(e) provide special training facility specified in section 4;

(f) ensure and monitor admission, attendance and completion of elementary education by every child;

Duties of
appropriate
Government.

(g) ensure good quality elementary education conforming to the standards and norms specified in the Schedule;

(h) ensure timely prescribing of curriculum and courses of study for elementary education; and

(i) provide training facility for teachers.

9. Every local authority shall—

Duties of local authority.

(a) provide free and compulsory elementary education to every child:

Provided that where a child is admitted by his or her parents or guardian, as the case may be, in a school other than a school established, owned, controlled or substantially financed by funds provided directly or indirectly by the appropriate Government or a local authority, such child or his or her parents or guardian, as the case may be, shall not be entitled to make a claim for reimbursement of expenditure incurred on elementary education of the child in such other school;

(b) ensure availability of a neighbourhood school as specified in section 6;

(c) ensure that the child belonging to weaker section and the child belonging to disadvantaged group are not discriminated against and prevented from pursuing and completing elementary education on any grounds;

(d) maintain records of children up to the age of fourteen years residing within its jurisdiction, in such manner as may be prescribed;

(e) ensure and monitor admission, attendance and completion of elementary education by every child residing within its jurisdiction;

(f) provide infrastructure including school building, teaching staff and learning material;

(g) provide special training facility specified in section 4;

(h) ensure good quality elementary education conforming to the standards and norms specified in the Schedule;

(i) ensure timely prescribing of curriculum and courses of study for elementary education;

(j) provide training facility for teachers;

(k) ensure admission of children of migrant families;

(l) monitor functioning of schools within its jurisdiction; and

(m) decide the academic calendar.

10. It shall be the duty of every parent or guardian to admit or cause to be admitted his or her child or ward, as the case may be, to an elementary education in the neighbourhood school.

Duty of parents and guardian.

11. With a view to prepare children above the age of three years for elementary education and to provide early childhood care and education for all children until they complete the age of six years, the appropriate Government may make necessary arrangement for providing free pre-school education for such children.

Appropriate Government to provide for pre-school education.

CHAPTER IV

RESPONSIBILITIES OF SCHOOLS AND TEACHERS

12. (1) For the purposes of this Act, a school,—

(a) specified in sub-clause (i) of clause (n) of section 2 shall provide free and compulsory elementary education to all children admitted therein;

(b) specified in sub-clause (ii) of clause (n) of section 2 shall provide free and compulsory elementary education to such proportion of children admitted therein as its annual recurring aid or grants so received bears to its annual recurring expenses, subject to a minimum of twenty-five per cent.;

Extent of school's responsibility for free and compulsory education.

(c) specified in sub-clauses (iii) and (iv) of clause (n) of section 2 shall admit in class I, to the extent of at least twenty-five per cent. of the strength of that class, children belonging to weaker section and disadvantaged group in the neighbourhood and provide free and compulsory elementary education till its completion:

Provided further that where a school specified in clause (n) of section 2 imparts pre-school education, the provisions of clauses (a) to (c) shall apply for admission to such pre-school education.

(2) The school specified in sub-clause (iv) of clause (n) of section 2 providing free and compulsory elementary education as specified in clause (c) of sub-section (1) shall be reimbursed expenditure so incurred by it to the extent of per-child-expenditure incurred by the State, or the actual amount charged from the child, whichever is less, in such manner as may be prescribed:

Provided that such reimbursement shall not exceed per-child-expenditure incurred by a school specified in sub-clause (i) of clause (n) of section 2:

Provided further that where such school is already under obligation to provide free education to a specified number of children on account of it having received any land, building, equipment or other facilities, either free of cost or at a concessional rate, such school shall not be entitled for reimbursement to the extent of such obligation.

(3) Every school shall provide such information as may be required by the appropriate Government or the local authority, as the case may be.

No capitation fee and screening procedure for admission.

13. (1) No school or person shall, while admitting a child, collect any capitation fee and subject the child or his or her parents or guardian to any screening procedure.

(2) Any school or person, if in contravention of the provisions of sub-section (1),—

(a) receives capitation fee, shall be punishable with fine which may extend to ten times the capitation fee charged;

(b) subjects a child to screening procedure, shall be punishable with fine which may extend to twenty-five thousand rupees for the first contravention and fifty thousand rupees for each subsequent contraventions.

Proof of age for admission.

14. (1) For the purposes of admission to elementary education, the age of a child shall be determined on the basis of the birth certificate issued in accordance with the provisions of the Births, Deaths and Marriages Registration Act, 1886 or on the basis of such other document, as may be prescribed. 6 of 1886.

(2) No child shall be denied admission in a school for lack of age proof.

No denial of admission.

15. A child shall be admitted in a school at the commencement of the academic year or within such extended period as may be prescribed:

Provided that no child shall be denied admission if such admission is sought subsequent to the extended period:

Provided further that any child admitted after the extended period shall complete his studies in such manner as may be prescribed by the appropriate Government.

Prohibition of holding back and expulsion.

16. No child admitted in a school shall be held back in any class or expelled from school till the completion of elementary education.

Prohibition of physical punishment and mental harassment of child.

17. (1) No child shall be subjected to physical punishment or mental harassment.

(2) Whoever contravenes the provisions of sub-section (1) shall be liable to disciplinary action under the service rules applicable to such person.

No School to be established without obtaining certificate of recognition.

18. (1) No school, other than a school established, owned or controlled by the appropriate Government or the local authority, shall, after the commencement of this Act, be established or function, without obtaining a certificate of recognition from such authority, by making an application in such form and manner, as may be prescribed.

(2) The authority prescribed under sub-section (1) shall issue the certificate of recognition in such form, within such period, in such manner, and subject to such conditions, as may be prescribed:

Provided that no such recognition shall be granted to a school unless it fulfils norms and standards specified under section 19.

(3) On the contravention of the conditions of recognition, the prescribed authority shall, by an order in writing, withdraw recognition:

Provided that such order shall contain a direction as to which of the neighbourhood school, the children studying in the derecognised school, shall be admitted:

Provided further that no recognition shall be so withdrawn without giving an opportunity of being heard to such school, in such manner, as may be prescribed.

(4) With effect from the date of withdrawal of the recognition under sub-section (3), no such school shall continue to function.

(5) Any person who establishes or runs a school without obtaining certificate of recognition, or continues to run a school after withdrawal of recognition, shall be liable to fine which may extend to one lakh rupees and in case of continuing contraventions, to a fine of ten thousand rupees for each day during which such contravention continues.

19. (1) No school shall be established or recognised under section 18, unless it fulfils the norms and standards specified in the Schedule.

Norms and standards for school.

(2) Where a school established before the commencement of this Act does not fulfil the norms and standards specified in the Schedule, it shall take steps to fulfil such norms and standards at its own expenses, within a period of three years from the date of such commencement.

(3) Where a school fails to fulfil the norms and standards within the period specified under sub-section (2), the authority prescribed under sub-section (1) of section 18 shall withdraw recognition granted to such school in the manner specified under sub-section (3) thereof.

(4) With effect from the date of withdrawal of recognition under sub-section (3), no school shall continue to function.

(5) Any person who continues to run a school after the recognition is withdrawn, shall be liable to fine which may extend to one lakh rupees and in case of continuing contraventions, to a fine of ten thousand rupees for each day during which such contravention continues.

20. The Central Government may, by notification, amend the Schedule by adding to, or omitting therefrom, any norms and standards.

Power to amend Schedule.

21. (1) A school, other than a school specified in sub-clause (iv) of clause (n) of section 2, shall constitute a School Management Committee consisting of the elected representatives of the local authority, parents or guardians of children admitted in such school and teachers:

School Management Committee.

Provided that atleast three-fourth of members of such Committee shall be parents or guardians:

Provided further that proportionate representation shall be given to the parents or guardians of children belonging to disadvantaged group and weaker section.

(2) The School Management Committee shall perform the following functions, namely:—

(a) monitor the working of the school;

(b) prepare and recommend school development plan;

(c) monitor the utilisation of the grants received from the appropriate Government or local authority or any other source; and

(d) perform such other functions as may be prescribed.

22. (1) Every School Management Committee, constituted under sub-section (1) of section 21, shall prepare a School Development Plan, in such manner as may be prescribed.

School Development Plan.

(2) The School Development Plan so prepared under sub-section (1) shall be the basis for the plans and grants to be made by the appropriate Government or local authority, as the case may be.

Qualifications for appointment and terms and conditions of service of teachers.

23. (1) Any person possessing such minimum qualifications, as laid down by an academic authority, authorised by the Central Government, by notification, shall be eligible for appointment as a teacher.

(2) Where a State does not have adequate institutions offering courses or training in teacher education, or teachers possessing minimum qualifications as laid down under sub-section (1) are not available in sufficient numbers, the Central Government may, if it deems necessary, by notification, relax the minimum qualifications required for appointment as a teacher, for such period, not exceeding five years, as may be specified in that notification:

Provided that a teacher who, at the commencement of this Act, does not possess minimum qualifications as laid down under sub-section (1), shall acquire such minimum qualifications within a period of five years.

(3) The salary and allowances payable to, and the terms and conditions of service of, teacher shall be such as may be prescribed.

Duties of teachers and redressal of grievances.

24. (1) A teacher appointed under sub-section (1) of section 23 shall perform the following duties, namely:—

(a) maintain regularity and punctuality in attending school;

(b) conduct and complete the curriculum in accordance with the provisions of sub-section (2) of section 29;

(c) complete entire curriculum within the specified time;

(d) assess the learning ability of each child and accordingly supplement additional instructions, if any, as required;

(e) hold regular meetings with parents and guardians and apprise them about the regularity in attendance, ability to learn, progress made in learning and any other relevant information about the child; and

(f) perform such other duties as may be prescribed.

(2) A teacher committing default in performance of duties specified in sub-section (1), shall be liable to disciplinary action under the service rules applicable to him or her:

Provided that before taking such disciplinary action, reasonable opportunity of being heard shall be afforded to such teacher.

(3) The grievances, if any, of the teacher shall be redressed in such manner as may be prescribed.

Pupil-Teacher Ratio.

25. (1) Within six months from the date of commencement of this Act, the appropriate Government and the local authority shall ensure that the Pupil-Teacher Ratio, as specified in the Schedule, is maintained in each school.

(2) For the purpose of maintaining the Pupil-Teacher Ratio under sub-section (1), no teacher posted in a school shall be made to serve in any other school or office or deployed for any non-educational purpose, other than those specified in section 27.

Filling up vacancies of teachers.

26. The appointing authority, in relation to a school established, owned, controlled or substantially financed by funds provided directly or indirectly by the appropriate Government or by a local authority, shall ensure that vacancy of teacher in a school under its control shall not exceed ten per cent. of the total sanctioned strength.

Prohibition of deployment of teachers for non-educational purposes.

27. No teacher shall be deployed for any non-educational purposes other than the decennial population census, disaster relief duties or duties relating to elections to the local authority or the State Legislatures or Parliament, as the case may be.

Prohibition of private tuition by teacher.

28. No teacher shall engage himself or herself in private tuition or private teaching activity.

CHAPTER V

CURRICULUM AND COMPLETION OF ELEMENTARY EDUCATION

29. (1) The curriculum and the evaluation procedure for elementary education shall be laid down by an academic authority to be specified by the appropriate Government, by notification.

Curriculum and evaluation procedure.

(2) The academic authority, while laying down the curriculum and the evaluation procedure under sub-section (1), shall take into consideration the following, namely:—

- (a) conformity with the values enshrined in the Constitution;
- (b) all round development of the child;
- (c) building up child's knowledge, potentiality and talent;
- (d) development of physical and mental abilities to the fullest extent;
- (e) learning through activities, discovery and exploration in a child friendly and child-centered manner;
- (f) medium of instructions shall, as far as practicable, be in child's mother tongue;
- (g) making the child free of fear, trauma and anxiety and helping the child to express views freely;
- (h) comprehensive and continuous evaluation of child's understanding of knowledge and his or her ability to apply the same.

30. (1) No child shall be required to pass any Board examination till completion of elementary education.

Examination and completion certificate.

(2) Every child completing his elementary education shall be awarded a certificate, in such form and in such manner, as may be prescribed.

CHAPTER VI

PROTECTION OF RIGHT OF CHILDREN

31. (1) The National Commission for Protection of Child Rights constituted under section 3, or, as the case may be, the State Commission for Protection of Child Rights constituted under section 17, of the Commissions for Protection of Child Rights Act, 2005, shall, in addition to the functions assigned to them under that Act, also perform the following functions, namely:—

Monitoring of child's right to education.

- (a) examine and review the safeguards for rights provided by or under this Act and recommend measures for their effective implementation;
- (b) inquire into complaints relating to child's right to free and compulsory education; and
- (c) take necessary steps as provided under sections 15 and 24 of the said Commissions for Protection of Child Rights Act.

(2) The said Commissions shall, while inquiring into any matters relating to child's right to free and compulsory education under clause (c) of sub-section (1), have the same powers as assigned to them respectively under sections 14 and 24 of the said Commissions for Protection of Child Rights Act.

(3) Where the State Commission for Protection of Child Rights has not been constituted in a State, the appropriate Government may, for the purpose of performing the functions specified in clauses (a) to (c) of sub-section (1), constitute such authority, in such manner and subject to such terms and conditions, as may be prescribed.

32. (1) Notwithstanding anything contained in section 31, any person having any grievance relating to the right of a child under this Act may make a written complaint to the local authority having jurisdiction.

Redressal of grievances.

(2) After receiving the complaint under sub-section (1), the local authority shall decide the matter as early as possible after affording a reasonable opportunity of being heard to the parties concerned.

(3) Any person aggrieved by the decision of the local authority may prefer an appeal to the State Commission for Protection of Child Rights or the authority prescribed under sub-section (3) of section 31, as the case may be.

(4) The appeal preferred under sub-section (3) shall be decided by State Commission for Protection of Child Rights or the authority prescribed under sub-section (3) of section 31, as the case may be, as provided under clause (c) of sub-section (1) of section 31.

Constitution of
National
Advisory
Council.

33. (1) The Central Government shall constitute, by notification, a National Advisory Council, consisting of such number of Members, not exceeding fifteen, as the Central Government may deem necessary, to be appointed from amongst persons having knowledge and practical experience in the field of elementary education and child development.

(2) The functions of the National Advisory Council shall be to advise the Central Government on implementation of the provisions of the Act in an effective manner.

(3) The allowances and other terms and conditions of the appointment of Members of the National Advisory Council shall be such as may be prescribed.

CHAPTER VII

MISCELLANEOUS

Power to issue
directions.

34. (1) The Central Government may issue guidelines and give such directions to the appropriate Government or, as the case may be, the local authority, as it deems fit for the purposes of implementation of the provisions of this Act.

(2) The appropriate Government may issue guidelines and give such directions, as it deems fit, to the local authority or the School Management Committee regarding implementation of the provisions of this Act.

(3) The local authority may issue guidelines and give such directions, as it deems fit, to the School Management Committee regarding implementation of the provisions of this Act.

Previous
sanction for
prosecution.

35. No prosecution for offences punishable under sub-section (2) of section 13, sub-section (5) of section 18 and sub-section (5) of section 19 shall be instituted except with the previous sanction of an officer authorised in this behalf, by the appropriate Government, by notification.

Protection of
action taken in
good faith.

36. No suit or other legal proceeding shall lie against the Central Government, the State Government, the National Commission for Protection of Child Rights, the State Commission for Protection of Child Rights, the local authority, the School Management Committee or any person, in respect of anything which is in good faith done or intended to be done, in pursuance of this Act, or any rules or order made thereunder.

Power of
appropriate
Government to
make rules.

37. (1) The appropriate Government may, by notification, make rules, for carrying out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing powers, such rules may provide for all or any of the following matters, namely:—

(a) the manner of giving special training and the time-limit thereof, under first proviso to section 4;

(b) the area or limits for establishment of a neighbourhood school, under section 6;

(c) the manner of maintenance of records of children up to the age of fourteen years, under clause (d) of section 9;

(d) the manner and extent of reimbursement of expenditure, under sub-section (2) of section 12;

(e) any other document for determining the age of child under sub-section (1) of section 14;

(f) the extended period for admission and the manner of completing study if admitted after the extended period, under section 15;

(g) the authority, the form and manner of making application for Certificate of Recognition, under sub-section (1) of section 18;

(h) the form, the period, the manner and the conditions for issuing Certificate of Recognition, under sub-section (2) of section 18;

(i) the manner of giving opportunity of hearing under second proviso to sub-section (3) of section 18;

(j) the other functions to be performed by School Management Committee under clause (d) of sub-section (2) of section 21;

(k) the manner of preparing School Development Plan under sub-section (1) of section 22;

(l) the salary and allowances payable to, and the terms and conditions of service of, teacher, under sub-section (3) of section 23;

(m) the duties to be performed by the teacher under clause (f) of sub-section (1) of section 24;

(n) the manner of redressing grievances of teachers under sub-section (3) of section 24;

(o) the form and manner of awarding certificate for completion of elementary education under sub-section (2) of section 30;

(p) the authority, the manner of its constitution and the terms and conditions thereto, under sub-section (3) of section 31;

(q) the allowances and other terms and conditions of appointment of Members of the National Advisory Council under sub-section (3) of section 33.

(3) Every rule made under this Act and every notification issued under sections 20 and 23 by the Central Government shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or notification or both Houses agree that the rule or notification should not be made, the rule or notification shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or notification.

(4) Every rule or notification made by the State Government under this Act shall be laid, as soon as may be after it is made, before the State Legislatures.

THE SCHEDULE

(See sections 19 and 25)

NORMS AND STANDARDS FOR A SCHOOL

Sl. No.	Item	Norms and Standards	
1.	Number of teachers:		
	(a) For first class to fifth class	Admitted children	Number of teachers
		Up to Sixty	Two
		Between sixty-one to ninety	Three
		Between Ninety-one to Four one hundred and twenty	Four
		Between One hundred and twenty-one to two hundred	Five
		Above One hundred and fifty children	Five plus one Head-teacher
		Above Two hundred children	Pupil-Teacher Ratio (excluding Head-teacher) shall not exceed forty.
	(b) For sixth class to eighth class	(1) At least one teacher per class so that there shall be at least one teacher each for—	
		(i) Science and Mathematics;	
		(ii) Social Studies;	
		(iii) Languages.	
		(2) At least one teacher for every thirty-five children.	
		(3) Where admission of children is above one hundred—	
		(i) a full time head-teacher;	
		(ii) part time instructors for—	
		(A) Art Education;	
		(B) Health and Physical Education;	
		(C) Work Education.	
2.	Building	All-weather building consisting of—	
		(i) at least one class-room for every teacher and an office-cum-store-cum-Head teacher's room;	
		(ii) barrier-free access;	
		(iii) separate toilets for boys and girls;	
		(iv) safe and adequate drinking water facility to all children;	

Sl. No.	Item	Norms and Standards
		(v) a kitchen where mid-day meal is cooked in the school;
		(vi) Playground;
		(vii) arrangements for securing the school building by boundary wall or fencing.
3.	Minimum number of working days/instructional hours in an academic year	(i) two hundred working days for first class to fifth class; (ii) two hundred and twenty working days for sixth class to eighth class; (iii) eight hundred instructional hours per academic year for first class to fifth class; (iv) one thousand instructional hours per academic year for sixth class to eighth class.
4.	Minimum number of working hours per week for the teacher	forty-five teaching plus preparation hours.
5.	Teaching learning equipment	Shall be provided to each class as required.
6.	Library	There shall be a library in each school providing newspaper, magazines and books on all subjects, including story-books.
7.	Play material, games and sports equipment	Shall be provided to each class as required.

STATEMENT OF OBJECTS AND REASONS

The crucial role of universal elementary education for strengthening the social fabric of democracy through provision of equal opportunities to all has been accepted since inception of our Republic. The Directive Principles of State Policy enumerated in our Constitution lays down that the State shall provide free and compulsory education to all children up to the age of fourteen years. Over the years there has been significant spatial and numerical expansion of elementary schools in the country, yet the goal of universal elementary education continues to elude us. The number of children, particularly children from disadvantaged groups and weaker sections, who drop out of school before completing elementary education, remains very large. Moreover, the quality of learning achievement is not always entirely satisfactory even in the case of children who complete elementary education.

2. Article 21A, as inserted by the Constitution (Eighty-sixth Amendment) Act, 2002, provides for free and compulsory education of all children in the age group of six to fourteen years as a Fundamental Right in such manner as the State may, by law, determine.

3. Consequently, the Right of Children to Free and Compulsory Education Bill, 2008, is proposed to be enacted which seeks to provide,—

(a) that every child has a right to be provided full time elementary education of satisfactory and equitable quality in a formal school which satisfies certain essential norms and standards;

(b) 'compulsory education' casts an obligation on the appropriate Government to provide and ensure admission, attendance and completion of elementary education;

(c) 'free education' means that no child, other than a child who has been admitted by his or her parents to a school which is not supported by the appropriate Government, shall be liable to pay any kind of fee or charges or expenses which may prevent him or her from pursuing and completing elementary education;

(d) the duties and responsibilities of the appropriate Governments, local authorities, parents, schools and teachers in providing free and compulsory education; and

(e) a system for protection of the right of children and a decentralized grievance redressal mechanism.

4. The proposed legislation is anchored in the belief that the values of equality, social justice and democracy and the creation of a just and humane society can be achieved only through provision of inclusive elementary education to all. Provision of free and compulsory education of satisfactory quality to children from disadvantaged and weaker sections is, therefore, not merely the responsibility of schools run or supported by the appropriate Governments, but also of schools which are not dependent on Government funds.

5. It is, therefore, expedient and necessary to enact a suitable legislation as envisaged in article 21-A of the Constitution.

6. The Bill seeks to achieve this objective.

ARJUN SINGH

Notes on clauses

Clause 2 seeks to define various words and expressions used in the Bill.

Clause 3 provides for every child of the age of six to fourteen years, the right to free and compulsory education in a neighbourhood school till the completion of elementary education.

Clause 4 seeks to provide for children above six years, who have either not been admitted to any school or, admitted but could not complete elementary education, the right to be admitted to a class appropriate to his or her age for completing elementary education and also special training to enable such children to be at par with other children and also making said children entitled for free education till completion of their elementary education, even after fourteen years.

Clause 5 seeks to provide a child, the right to seek transfer from one school to another, either within a State or outside and for immediate issue of transfer certificate to such child and also for liability for disciplinary action against the in-charge of the school delaying issuance of transfer certificate.

Clause 6 provides for the establishment of a school in every neighbourhood.

Clause 7 seeks to provide for financial and other responsibilities of the Central Government and the State Governments and for developing by the Central Government of a national curriculum and the standards for training of teachers.

Clause 8 provides for the duties of the appropriate Governments.

Clause 9 seeks to provide for the duties of the local authorities.

Clause 10 provides for the duty of parents and guardian.

Clause 11 seeks to provide for making necessary arrangements for pre-school education by appropriate Governments.

Clause 12 provides for the responsibility of schools for providing free and compulsory education.

Clause 13 provides for prohibition of capitation fee and screening procedure and for punishment for contravention of these provisions.

Clause 14 seeks to provide for proof of age of a child and for non-denial of admission in absence thereof.

Clause 15 provides for prohibiting schools from denying admission to a child, irrespective of the time in the academic year.

Clause 16 seeks to provide for prohibiting the holding back in any class or expelling a child from school till the completion of elementary education.

Clause 17 provides for prohibition of physical punishment or mental harassment of any child.

Clause 18 seeks to provide for issuance of a Certificate of Recognition for establishing a school and for withdrawal of said recognition and also for imposition of fine for contravention.

Clause 19 provides for fulfilment of norms and standards by schools for recognition, withdrawal of recognition and imposition of fine in case of contravention.

Clause 20 seeks to provide for amendment of Schedule.

Clause 21 seeks to provide for constitution and functions of a School Management Committee.

Clause 22 seeks to provide for preparation of a School Development Plan by the School Management Committee.

Clause 23 seeks to provide for qualifications and terms and conditions of service of teachers.

Clause 24 seeks to provide for duties of teachers, disciplinary action against them and redressal of their grievances.

Clause 25 seeks to provide for maintenance of pupil-teacher ratio by appropriate Governments and local authority.

Clause 26 seeks to provide for filling up of vacancies of teachers in schools.

Clause 27 provides for prohibition of deployment of teachers for non-educational purposes, except for decennial population census, disaster relief, elections to local authority, State Legislature and Parliament.

Clause 28 seeks to provide for prohibition of private tuition by teachers.

Clause 29 provide for curriculum and evaluation procedure for elementary education to be laid down by an academic authority.

Clause 30 seeks to provide for prohibition of requiring any child to pass examinations till completion of elementary education and for issuance of a certificate of completion of elementary education.

Clause 31 provides for certain additional functions and powers of the National and State Commissions for Protection of Child Rights to be performed in pursuance of the provisions of this Bill.

Clause 32 seeks to provide for a mechanism for redressal of grievances relating to rights of the child under the proposed legislation.

Clause 33 seeks to provide for constitution of a National Advisory Council to give expert advice to the Central Government on implementation of provisions of the proposed legislation.

Clause 34 seeks to provide for the issuance of guidelines and directions by the Central Government, appropriate Government and local authority for implementation of the provisions of the proposed legislation.

Clause 35 provides for previous sanction of an authorised officer for prosecution of offences.

Clause 36 seeks to provide for protection, against any legal suit or proceedings, to appropriate Government, local authority, school management committee or any person for any action taken in good faith.

Clause 37 provides for the powers of appropriate Government to make rules and for laying of rules and notifications.

FINANCIAL MEMORANDUM

Clause 7 of the Bill provides that the Central Government and the State Government shall make available the funds for carrying out its provisions.

The Central Government shall prepare the estimates of capital and recurring expenditure and provide to the State Governments, as grants-in-aid of revenues, such percentage of expenditure as it may determine from time to time, in consultation with State Governments. In addition, it stipulates that the Central Government may make a request to the President to make a reference to the Finance Commission under sub-clause (d) of clause (3) of article 280 to examine the need for additional resources to be provided to any State Government so that the said State Government may provide its share of funds for carrying out the provisions of the enactment.

It is not possible to quantify the financial requirement on this account at this stage. However, the expenditure on provision of funds by the Central Government would be met from the Consolidated Fund of India through annual budgetary provision under the Department of School Education and Literacy, Ministry of Human Resource Development.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 4 of the Bill empowers the appropriate Government to make rules to provide for the manner of giving special training to a child who is directly admitted in a class appropriate to his age in order to be at par with others and the time-limit of such training.

Clause 6 empowers the appropriate Government to provide for the area or limits within which a school in every neighbourhood shall be established.

Item (d) of clause 9 empowers the appropriate Government to make rules to provide for the manner of maintenance of records of children up to the age of 14 years residing within the jurisdiction of a local authority.

Sub-clause (2) of clause 12 empowers the appropriate Government to make rules to provide for the manner of reimbursement of expenditure to the school.

Sub-clause (1) of clause 14 empowers the appropriate Government to make rules to provide for other documents for determining the age of the child.

Clause 15 empowers the appropriate Government to make rules to provide for the extended period for admission of a child in a school and the manner of completing his studies if admitted after the extended period.

Sub-clause (1) of clause 18 empowers the appropriate Government to make rules to provide for the authority, the period, the form and manner of making application for obtaining a certificate of recognition of a school other than school established, owned or controlled by the appropriate Government or the local authority.

Sub-clause (2) of said clause empowers the appropriate Government to provide for the form, period and the manner and the conditions for issuing certificate of recognition.

Further sub-clause (3) of said clause empowers the appropriate Government to provide for the manner of giving opportunity of hearing before withdrawing the recognition.

Item (d) of sub-clause (2) of clause 21 empowers the appropriate Government to make rules to specify the functions to be performed by School Management Committee.

Sub-clause (1) of clause 22 empowers the appropriate Government to make rules to provide for the manner of preparing school development plan.

Sub-clause (2) of clause 23 empowers the appropriate Government to make rules to provide for the salary and allowances payable to, and the terms and conditions of, the service of teachers.

Sub-clause (1) of clause 24 empowers the appropriate Government to make rules to provide for the duties to be performed by the teachers.

Further sub-clause (3) of the said clause empowers the appropriate Government to provide for the manner of redressing the grievances of teachers.

Sub-clause (2) of clause 30 empowers the appropriate Government to make rules to provide for the form and manner of awarding certificate for completion of elementary education.

Sub-clause (3) of clause 31 empowers the appropriate Government to make rules to provide for the authority, the manner of its constitution and the terms and conditions subject to which such authority shall be constituted.

Sub-clause (3) of clause 33 empowers the appropriate Government to make rules to provide for the allowances and other terms and conditions of appointment of members of the National Advisory Council.

The matters for which the rules may be made are matters of procedure and administrative details and it is not possible to provide for them all in the Bill. The delegation of legislative power is, therefore, of a normal character.

II

BILL NO. LXVIII OF 2008

A Bill further to amend the Telecom Regulatory Authority of India Act, 1997.

BE it enacted by Parliament in the Fifty-ninth Year of the Republic of India as follows:—

1. (1) This Act may be called the Telecom Regulatory Authority of India (Amendment) Act, 2008.

Short title and
commence-
ment.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

24 of 1997.

2. In the Telecom Regulatory Authority of India Act, 1997, in section 4, for the proviso, the following proviso shall be substituted, namely:—

Amendment of
section 4.

“Provided that a person, who is in the service of the Government or has retired from such service on attaining the age of superannuation, shall not be appointed as a member unless such person has held the post of Secretary or Additional Secretary to the Government of India, or any equivalent post in the Central Government or the State Government, for a period of not less than three years.”

STATEMENT OF OBJECTS AND REASONS

The Telecom Regulatory Authority of India (hereinafter referred to as TRAI) is a statutory body set up by the Government of India under section 3 of the Telecom Regulatory Authority of India Act, 1997. It consists of a Chairperson and not more than two full-time members and not more than two part-time members.

2. The qualifications for the appointment of the Chairperson and other members of the TRAI are provided in section 4 of the said Act. In terms of this section, the Chairperson and other members of the Authority shall be appointed by the Central Government from amongst persons who have special knowledge of, and professional experience in, telecommunication, industry, finance, accountancy, law, management or consumer affairs. The proviso of the said section further provides that a person who is, or has been, in the service of Government shall not be appointed as a member unless such person has held the post of Secretary or Additional Secretary, or the post of Additional Secretary and Secretary to the Government of India or any equivalent post in the Central Government or the State Government for a period of not less than three years.

3. The provisions of the proviso of the said section has been considered as unreasonable, inconsistent and having no nexus with the object of finding an appropriate person to be appointed as Chairperson or Member of the TRAI as it inflicts a disability in cases where a person who has served the Government, even for short duration, in one or other capacity and while being in the Government or after leaving the Government has excelled in the field of telecommunication or other relevant field. In these cases, such a person would not be eligible under section 4 of the said Act only for the reason for his not having held the post of Secretary or Additional Secretary or equivalent post in the Central Government or the State Government for a period of three years.

4. In order to remove the said inconsistency in the qualifications of the Chairperson or other members of TRAI, the amendment to the proviso of section 4 of the said Act has been proposed to provide that a person, who is in the service of Government or has retired from such service on attaining the age of superannuation, shall not be appointed as a member unless such person has held the post of Secretary or Additional Secretary to the Government of India, or any equivalent post in the Central Government or the State Government, for a period of not less than three years.

5. The Bill seeks to achieve the above objective.

A. RAJA

III

BILL NO. LXVI OF 2008

A Bill to provide for the protection and utilisation of intellectual property originating from public funded research and for matters connected therewith or incidental thereto.

BE it enacted by Parliament in the Fifty-ninth Year of the Republic of India as follows:—

1. (1) This Act may be called the Protection and Utilisation of Public Funded Intellectual Property Act, 2008.

Short title and
commence-
ment.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

2. In this Act, unless the context otherwise requires,—

Definitions.

(a) “designated countries” means countries in respect of which the recipient opts to retain the title under section 5;

(b) “Government” means the Central Government and includes local authorities and statutory authorities under the control of the Central Government;

(c) "intellectual property" means any right to intangible property, including trade mark, patent, design and plant variety as defined under the Copyright Act, 1957, the Patents Act, 1970, the Designs Act, 2000, the Semiconductor Integrated Circuits Layout-Design Act, 2000 and the Protection of Plant Varieties and Farmers' Rights Act, 2001;

14 of 1957,
39 of 1970,
16 of 2000,
37 of 2000,
53 of 2001.

(d) "intellectual property creator" means the person employed or engaged by the recipient for research and development and who created the public funded intellectual property;

(e) "recipient" includes a university or institution of higher education established for research purposes which has entered into an agreement with the Government under section 3, and includes an organisation established by an Act of Parliament or a non-profit scientific or educational organisation registered under the Societies Registration Act, 1860;

21 of 1860.

(f) "prescribed" means prescribed by rules made under this Act;

(g) "public funded intellectual property" means intellectual property which is the outcome of research and development for which the Government has provided grant under section 3;

(h) "utilisation" means the manufacture of a composition or product, the practice of a process or method, operation of a machine or system, or commercialisation thereof.

Funding
agreement.

3. (1) Any recipient interested to take a grant from the Government for the purpose of research and development shall enter into an agreement with the Government before receipt of such grant.

(2) The agreement entered into under sub-section (1) shall be in such form and manner as may be prescribed.

(3) The recipient shall—

(a) make disclosure of public funded intellectual property to the Government within the time specified under section 4;

(b) perform the duties under section 7;

(c) constitute an intellectual property management committee in the manner specified under section 10;

(d) abide by such other conditions as may be prescribed.

(4) The Government shall not release any grant to any recipient until an agreement under sub-section (1) is entered into.

Disclosure of
public funded
intellectual
property.

4. The recipient shall within a period of sixty days of actual knowledge of the public funded intellectual property make a disclosure thereof to the Government in such form and manner as may be prescribed.

Vesting of title
of public
funded
intellectual
property.

5. (1) The recipient shall within ninety days of the disclosure under section 4, but within the period specified by any law for the time being in force for receipt of application in the designated countries for protection of public funded intellectual property, intimate, in such form as may be prescribed, to the Government, his intention to retain the title of the public funded intellectual property with respect to the designated countries and the Government shall allow the title of such public funded intellectual property with respect to such countries to vest in the recipient:

Provided that where the recipient fails to disclose the public funded intellectual property under section 4 or give such intimation within the specified time, the title of the public funded intellectual property, shall vest in the Government:

Provided further that the Government may, by an Order published in the Official Gazette, refuse the title to the recipient within ninety days of the receipt of the intimation on any of the following grounds,—

(a) that the recipient is not located in India or does not have a place of business located in India or is subject to the control of a foreign Government;

(b) that in the public interest and in exceptional circumstances the Government deems it expedient so to do;

(c) that it is necessary so to do in the interest of the security of the nation;

(d) that the public funded intellectual property is related to atomic energy as defined under section 20 of the Atomic Energy Act, 1962 or under section 4 of the Patents Act, 1970:

33 of 1962.
39 of 1970.

Provided also that where the Government is satisfied that the recipient has, for reasons beyond his control failed to give intimation within the time specified under this sub-section, it may, for reasons to be recorded in writing, extend the said period to such limit as may be prescribed.

(2) The title of the public funded intellectual property in respect of the countries other than the designated countries shall vest in the Government.

(3) Where the recipient fails to apply for protection of public funded intellectual property within the period specified under section 7, the title of same, shall vest in the Government.

(4) Where the recipient does not make a written submission to retain the title to the intellectual property or is refused the retention of title to the intellectual property by the Government, and where more than one Government authorities are party to the funding agreement, the intellectual property shall be jointly owned by the Government authorities on terms agreed upon by such Government authorities:

Provided that the share of costs and responsibility for intellectual property protection, maintenance, litigation and its utilisation shall be mutually agreed to by the Government authorities within such time as may be prescribed.

6. The recipient shall not publically disclose, publish or exhibit the public funded intellectual property till an application for the protection of the same in the designated countries is made:

Bar to public disclosure, publication and exhibition.

Provided that the recipient shall give intimation regarding public disclosure, publication or exhibition at least fifteen days before such disclosure, publication and exhibition to enable the Government to file application in countries other than the designated countries.

7. A recipient who retains the title to a public funded intellectual property shall,—

Duties of recipient who retains title to intellectual property.

(a) apply for the protection of public funded intellectual property in designated countries within the period specified by any law for the time being in force;

(b) having regard to its financial capability, bear all the expenses for its protection and enforcement;

(c) initiate the process for utilisation of the public funded intellectual property immediately after the application for protection of public funded intellectual property is filed and submit a written report within six months and biannually thereafter to the Government, specifying the steps taken for utilisation of the public funded intellectual property, details of licensees and any other information as may be prescribed.

(d) share the royalties or income received from the public funded intellectual property with the intellectual property creator under section 11;

(e) cause to maintain the accounts of the intellectual property management committee constituted under section 10;

(f) cause the funds of the intellectual property management committee to be audited under section 14.

Assignment.

8. The recipient shall not assign its right to public funded intellectual property to any person or body of persons without the prior written permission of the Government obtained sixty days in advance to such assignment:

Provided that the Government shall within a period of forty-five days convey its decision to grant or refuse such permission to the recipient:

Provided further that where no such decision is conveyed within the said period of forty-five days, permission shall be deemed to have been granted.

Duties of intellectual property creator.

9. (1) The intellectual property creator shall, immediately after the creation of public funded intellectual property, make a disclosure to the recipient to enable it to make a disclosure to Government under section 4.

(2) The intellectual property creator shall co-operate in all respects with the recipient or the Government, as the case may be, in the process of protection and utilisation of the public funded intellectual property so created.

(3) The intellectual property creator shall not publish, exhibit or publicly disclose the public funded intellectual property without prior intimation, of at least thirty days, to the recipient or the Government, as the case may be.

Constitution of intellectual property management committee and its functions.

10. (1) Every recipient shall, within one hundred and eighty days of the receipt of the funds under section 3, constitute an intellectual property management committee within its organisation.

(2) The intellectual property management committee constituted under sub-section (1) shall,—

(a) identify, assess, document and protect public funded intellectual property having commercial potential;

(b) perform market research and market such public funded intellectual property;

(c) create an intellectual property management fund;

(d) monitor the process of licensing and assignment;

(e) manage revenues from licensed public funded intellectual properties for the organisation;

(f) within one hundred and eighty days of its constitution, establish mechanism to promote the culture of innovation and public funded intellectual property generation within the organisation;

(g) create mechanisms to govern the relations between the recipient and the creator of public funded intellectual property.

Sharing of royalties or income.

11. (1) The income or royalties arising out of the public funded intellectual property shall be shared as under:—

(a) subject to the provisions of any agreement which may be entered into between the intellectual property creator and the recipient, not less than thirty per cent. of such income or royalties, after deducting the expenses incurred in protection and utilisation, shall be given to the creator of intellectual property:

Provided that where such agreement has a provision for a lesser amount than thirty per cent. of the net income, the provisions of this section shall prevail;

(b) out of the remainder, thirty per cent. shall be paid into the fund created by the intellectual property management committee;

(c) rest of the income or royalties shall be retained by the recipient for their utilisation in any further research and to meet other expenses for the protection and maintenance of public funded intellectual property.

(2) The recipient shall give a written report regarding the distribution of the royalties or income to the Government along with report under clause (c) of section 7.

12. Notwithstanding anything contained in this Act, no recipient who has retained title to any public funded intellectual property and no assignee of any such recipient shall grant, to any person, the exclusive right to use or sell any public funded intellectual property in India, unless such person manufactures products using such public funded intellectual property substantially in India:

Preference for national industry.

Provided that the Government may, for reasons to be recorded in writing, allow such sale or use for manufacture in countries other than India.

13. Notwithstanding anything contained in this Act, the Government shall have a right to practice and to assign any public funded intellectual property to carry out its obligations under any international treaty or agreement.

Government's right to public funded intellectual property.

14. (1) The recipient shall maintain proper accounts and other relevant records and prepare an annual statement of accounts in such form as may be, in consultation with the Comptroller and Auditor-General of India, prescribed.

Audit and accounts.

(2) The accounts of the recipient shall be audited by the Comptroller and Auditor-General of India at such intervals as may be specified by him and any expenditure incurred in connection with such audit shall be payable by the recipient to the Comptroller and Auditor-General of India.

(3) The Comptroller and Auditor-General of India shall have the same rights and privileges and authority as he has in connection with the audit of the Government accounts and, in particular, shall have the right to demand the production of books, accounts, connected vouchers, other documents and papers and inspection of offices of the recipient.

(4) The accounts of the recipient, as certified by the Comptroller and Auditor-General of India together with the audit report thereon, shall be forwarded to the Government at such time as may be prescribed.

15. The recipient, shall prepare in such form and at such time as may be prescribed, an annual report giving a summary of its activities including information relating to the proceedings and policies during the previous years and such report shall also contain statements of annual accounts of the recipient.

Annual Report.

26 of 1996.

16. All disputes arising as a result of the provisions of this Act shall be settled in accordance with the provisions of the Arbitration and Conciliation Act, 1996.

Dispute settlement.

17. Nothing in this Act shall apply to any intellectual property generated out of scholarship, fellowship and grant given by the Government, primarily, for educational purposes:

Disposition of rights in educational Awards.

33 of 1962.

Provided that this section shall not apply to any public funded intellectual property falling within sub-section (1) of section 20 of the Atomic Energy Act, 1962.

18. The Government shall,—

Duties of Government.

(a) apply for protection and maintain the public funded intellectual property for which the title vests with it under section 5 in any country as deemed necessary;

(b) grant non-exclusive, exclusive, or partially exclusive licences for Government owned public funded intellectual property, royalty free or for royalties or other consideration and on such terms and conditions as may be prescribed;

(c) transfer custody and administration, in whole or in part, to any other entity, the right, title or interest in any Government owned public funded intellectual property under section 5;

(d) give directions for prohibiting or restricting the publication of information with respect to any public funded intellectual property or communication of such information to any person or entity which it considers prejudicial to the interest of the security of India.

Explanation.— For the purposes of this section, the expression “interest of security of India” means any action for the security of India that relates to the use of public funded intellectual property for making a product which —

(i) relates to fissionable materials or the materials from which they are derived; or

(ii) relates to the traffic in arms, ammunition and implements of war and to such traffic in other goods and materials as is carried on directly or indirectly for the purpose of supplying to a defence establishment; or

(iii) is taken in time of war or other emergency in international relations;

(e) acquire title to any public funded intellectual property which it considers necessary in the interest of the security of India.

Protection of
action taken in
good faith.

19. No suit or other legal proceeding shall lie against any person in respect of anything which is in good faith done or intended to be done in pursuance of this Act.

Stoppage of
grant and
recovery of
grant released.

20. Where a recipient fails to fulfil the conditions of the agreement entered into under section 3 and contravenes any of the provisions of sections 3, 4, 5, 6, 7, 8, 10, 11, 12, 14 and 15 the Government shall,—

(a) recover the amount of grant already released with interest at the rate of ten per cent. per annum thereon in such manner as may be prescribed; and

(b) bar such recipient for future grants for those purposes which were subjects of initial funding agreement.

Penalties for
failure to
discharge
duties of
intellectual
property
creator.

21. Whoever, being creator of intellectual property, fails to discharge his duties under section 9 shall,—

(a) not be given his share of income or royalty; and

(b) be punishable with fine which may extend to twenty-five per cent. of the amount of grant received by the recipient for research and development.

Penalty for
failure to
discharge
duties of
recipient.

22. Whoever being recipient, contravenes the provisions of sections 3, 4, 5, 6, 7, 8, 10, 11, 12, 14 and 15 shall be punishable with fine which may extend to fifty per cent. of the amount of the grant received by him for research and development under section 3.

Power to
remove
difficulties.

23. (1) If any difficulty arises in giving effect to the provisions of this Act, the Government may, by order, not inconsistent with the provisions of this Act, remove the difficulty:

Provided that no such order shall be made after the expiry of a period of two years from the commencement of this Act.

(2) Every order made under this section shall be laid, as soon as may be, after it is made, before each House of Parliament.

Power to make
rules.

24 (1) The Government may, by notification in the Official Gazette, make rules to carry out the provisions of this Act.

(2) Without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the form and manner in which agreement shall be entered into under sub-section (2) of section 3;

- (b) the conditions under clause (d) of sub-section (3) of section 3;
- (c) form and manner in which the disclosure shall be made under section 4;
- (d) form in which the recipient shall intimate his intention and the limit of time extended under sub-section (1) of section 5;
- (e) the time for the Government authorities to mutually agree to share costs and responsibilities under sub-section (4) of section 5;
- (f) information under clause (c) of section 7;
- (g) form in which the annual statement of accounts shall be made under sub-section (1) of section 14;
- (h) the time at which the accounts together with the audit report shall be forwarded to the Government under sub-section (4) of section 14;
- (i) the form and time in which the annual report shall be prepared under section 15;
- (j) the terms and conditions for grant of licences under clause (b) of section 18;
- (k) the manner of recovery of grant under section 20.

(3) Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session in which it is so laid or the session immediately following, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, that rule shall, thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

STATEMENT OF OBJECTS AND REASONS

To compete in a global environment, it is necessary for India to innovate and promote creativity. For promoting creativity and innovation, India needs to protect and utilise the intellectual property created out of public funded research and development. Over the years, the Government has invested large funds in research and development. To provide incentives for creativity and innovation, it is necessary to develop a framework in which the protection and utilisation of intellectual property is put in place. The ultimate objective, however, is to ensure access to such innovation by all stakeholders for public good.

2. The proposed legislation imposes obligations and creates rights to optimise the potential of public funded research and development, provides incentive to create intellectual property and the mechanism for its protection and utilisation, encourages innovation in small and medium enterprises, promotes collaboration between Government, private enterprises and non-Government organisations, commercialisation of intellectual property created out of public funded research and development and the culture of innovation in the country.

3. The proposed legislation will enhance awareness about intellectual property issues, especially in universities, academic and research institutions. It will also increase the responsibility of universities, academic and research institutions to encourage students, faculty and scientists to innovate. Such innovations can be utilised for raising financial resources of these establishments, through royalties or income. The income from intellectual property will promote self-reliance and will minimise dependence of universities, academic and research institutions and other recipient organisations for Government funding.

4. The proposed legislation seeks to achieve the above objects.

Notes on clauses

Clause 2 seeks to define various words and expressions used in the Bill.

Clause 3 seeks to provide for a funding agreement between the Government and the recipient before release of grant for research and development.

Clause 4 provides for disclosure of public funded intellectual property within a period specified therein.

Clause 5 seeks to provide for vesting of the title of public funded intellectual property with the recipient or the Government, as the case may be.

Clause 6 seeks to bar public disclosure, publication and exhibition of the public funded intellectual property.

Clause 7 provides for duties of the recipient who retains title to the public funded intellectual property.

Clause 8 provides for the conditions for assignment of the public funded intellectual property by the recipient.

Clause 9 provides for the duties of intellectual property creator.

Clause 10 provides for the constitution of intellectual property management committee and its functions.

Clause 11 provides for sharing of royalties or income arising out of public funded intellectual property between the recipient and the intellectual property creator.

Clause 12 provides for the preference to the domestic industry in manufacturing products using the public funded intellectual property.

Clause 13 seeks to empower the Government to practice or assign any public funded intellectual property to carry out its obligations under International treaty or agreement.

Clause 14 seeks to provide for preparation of accounts and other relevant records by the recipient for its audit by the Comptroller and Auditor-General of India.

Clause 15 provides for preparation of an annual report by the recipient.

Clause 16 provides for dispute settlement in accordance with the provisions of the Arbitration and Conciliation Act, 1996.

Clause 17 seeks to provide exemption to certain intellectual property generated for educational purposes from the purview of this Bill.

Clause 18 provides for duties of the Government in respect of the countries for which intellectual property title vests with it.

Clause 19 provides for protection of action taken in good faith.

Clause 20 seeks to provide for stoppage of grant and its recovery in case of contravention of the provisions of the Bill.

Clause 21 provides for penalties for failure to discharge the duties of intellectual property creator.

Clause 22 provides for penalty for failures to discharge the duties of the recipient.

Clause 23 seeks to empower the Government to remove difficulties in implementation of the Bill.

Clause 24 seeks to empower the Government to make rules to carry out the provisions of the Bill.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Sub-clause (2) of clause 3 of the Bill empowers the Central Government to make rules to provide for the form and manner in which agreement shall be entered into.

Item (d) of sub-clause (3) of clause 3 empowers the Central Government to lay down conditions to be complied by the recipient.

Clause 4 empowers the Central Government to make rules to provide for the form and manner in which the disclosure shall be made.

Sub-clause (1) of clause 5 empowers the Central Government to make rules to provide for the form in which the recipient shall intimate its intention to retain title of the public funded intellectual property with respect to designated countries and the extended limit of time for such intimation.

Sub-clause (4) of clause 5 empowers the Central Government to make rules specifying time to mutually agree to share costs and responsibilities with regard to jointly owned public funded intellectual property.

Sub-clause (c) of clause 7 empowers the Central Government to make rules specifying the information to be furnished, in the report, by the recipient who retains the title to a public funded intellectual property.

Sub-clause (1) of clause 14 empowers the Central Government to make rules to provide for the form for maintenance of accounts and records and preparation of annual statement of accounts.

Sub-clause (4) of clause 14 empowers the Central Government to make rules specifying the time frame for submission of accounts together with audit report to the Government.

Clause 15 empowers the Central Government to make rules to provide for the form and time in which the annual report shall be prepared by the recipient.

Sub-clause (b) of clause 18 empowers the Central Government to make rules with regard to the terms and conditions for grant of licences.

Clause 20 empowers the Central Government to make rules specifying the manner of recovery of grant from the recipient for contravention of the provisions of the Bill.

The matters, for which the rules are to be made, pertain to matters of procedure or administrative detail, and it is not possible to provide for them in the Bill. The delegation of legislative power is, therefore, of normal character.

V. K. AGNIHOTRI,
Secretary-General.